

**UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:09CV36-RJC-DSC**

**BENJAMIN TATE,**

**Plaintiff,**

**v.**

**NC PEPSI-COLA BOTTLING COMPANY OF  
CHARLOTTE, INC.,**

**Defendant,**

**ORDER**

**THIS MATTER** is before the Court on “Gaston Memorial Hospital Incorporated’s Motion to Quash Subpoena” (document #9) filed September 9, 2009; and Plaintiff’s “Response ... ” (document #13) filed September 27, 2009. On September 29, 2009, Movant filed its “Reply ... ” (document #13). This matter has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §636(b)(1)(B), and the subject Motion is now ripe for determination.

This matter concerns a subpoena served by Plaintiff’s counsel on September 4, 2009, seeking production from Movant of Plaintiff’s medical records. As Movant states in its Motion and Reply, the subpoena seeks the production of confidential personal health information protected from disclosure by state and federal health privacy laws, including the Health Information Portability and Accountability Act (“HIPAA”). Hodge v. City of Long Beach, 2006 WL 1211725 (E.D.N.Y.), \* 2 (quashing defendant’s subpoena directed to plaintiff’s treating physician and seeking production of plaintiff’s medical records where the subpoena was not accompanied by a HIPAA-compliant authorization signed by plaintiff).

Pursuant to HIPAA, individually identifiable health information, such as the requested medical records of Plaintiff, may not be disclosed without Plaintiff's signed consent. 45 C.F.R. § 164.512, see also United States v. Zamora, 408 F.Supp.2d 295, 297 (S.D. Tex. 2006). Movant may not even confirm whether Plaintiff received health care services from it, unless Plaintiff consents to the disclosure of his health information or disclosure is otherwise provided by law.

In short, until Plaintiff provides a signed HIPAA-compliant medical authorization, Movant cannot release his medical records, even to his attorney.

**NOW, THEREFORE, IT IS ORDERED:**

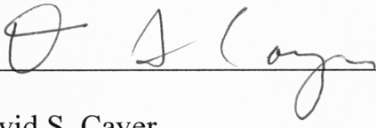
1. "Gaston Memorial Hospital Incorporated's Motion to Quash Subpoena" (document #9) is **GRANTED**.

2. The Movant and Plaintiff shall bear their own costs at this time.

3. The Clerk is directed to send copies of this Order to moving counsel; to counsel for the parties; and to the Honorable Robert J. Conrad, Jr.

**SO ORDERED.**

Signed: October 5, 2009

  
\_\_\_\_\_  
David S. Cayer  
United States Magistrate Judge

